IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16452 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUNDERMAL SUGNAMAL SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16452 of 2004

MS SHAILI A KAPADIA for Petitioner No. 1

Mr. Mukesh A. Patel, AGP for Respondent No. 1-2

MR DHAVAL D VYAS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 20/01/2005

ORAL JUDGEMENT

Rule. Shri MA Patel, learned AGP waives service of Rule on behalf of respondents No. 1 and 2. Shri Dhaval D. Vyas, learned advocate waives service of Rule on behalf of respondent No.3. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the State Government - revisional authority, i.e. Urban Development & Urban Housing Department, Gandhinagar, dated 15th October 2004 in dismissing the appeal/revision application preferred by the petitioner against the order passed by the Collector, Bhavnagar, dated 4.4.2003 under Section 258 of the Gujarat Municipalities Act on the ground of limitation. The original order passed by the Collector, Bhavnagar dated 4.4.2003 by which the Collector, Bhavnagar has set aside the Resolution passed by the Palitana Nagarpalika dated 1.7.2001 is set aside, is also challenged in the present Special Civil Application.

3. In view of the fact that the impugned order dated 4.4.2003 passed by the Collector, Bhavnagar itself is required to be quashed and set aside on the ground that the petitioners were not heard before setting aside the resolution dated 1.7.2001, instead of considering the legality and validity of the order passed by the State Government dated 15th October 2004 in dismissing the revision application on the ground of limitation, this Court proposes to consider the order passed by the Collector, Bhavnagar dated 4.4.2003 itself on merits.

4. Ms.Shaili A. Kapadia, learned advocate appearing on behalf of the petitioner, has vehemently submitted, that the impugned order dated 4.4.2003 passed by the Collector, Bhavnagar, in permanently staying/suspending the Resolution No. 101 dated 1.7.2001 by which the land in question was given to the petitioner on lease, is without giving any opportunity of being heard and the same is in breach of principles of natural justice. Shri Dhaval D. Vyas, learned advocate appearing on behalf of the respondent Nagarpalika has as such supported the petitioner and the Nagarpalika is bound to support the petitioner as it was their action which was set aside by the Collector.

5. Shri Mukesh Patel, learned AGP has submitted that as it was found by the Collector, Bhavnagar that the action of the Nagarpalika in giving the land to the petitioner on lease itself is contrary to the provisions of the Gujarat Municipalities Act and the Resolution No.101 dated 1.7.2001 itself was in contravention of the provisions of the Gujarat Municipalities Act and therefore the same has been rightly set aside by the Collector, Bhavnagar. Shri Patel has also tried to

support the order passed by the Collector, Bhavnagar on merits also, however he has not been able to satisfy this Court whether before cancelling the Resolution No. 101 dated 1.7.2001 the petitioner was heard or not.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is an admitted position that by Resolution No. 101/2001 dated 1.7.2001 certain rights are created in favour of the petitioner, i.e. land in question is given on lease to the petitioner and as such the petitioner is the beneficiary of Resolution No. 101/2001 dated 1.7.2001. Admittedly, before quashing and setting the said Resolution No. 101/2001 dated 1.7.2001 the petitioner was not heard. Under the circumstances, the impugned order passed by the Collector, Bhavnagar, dated 4th April 2003 in Municipal Case No. 7/2002 is required to be quashed and set aside as the same being against the principles of natural justice.

8. In the facts and circumstances of the case, without going into the legality and validity of the impugned order passed by the Collector, Bhavnagar, dated 4th April 2003 on merits, the impugned order dated 4th April 2003 is quashed and set aside on the ground that before passing the impugned order dated 4th April 2003 the petitioner was not given opportunity of being heard. Consequently, the impugned order passed by the Collector, Bhavnagar dated 4th April 2003 is accordingly quashed and set aside. The matter is remanded to the Collector, Bhavnagar, for decising the same afresh in accordance with law and on merits after affording opportunity of hearing to the petitioner. At this stage, Ms. Shaili Kapadia, learned advocate appearing for the petitioner states that the petitioner will remain present before the Collector, Bhavnagar, at the first instance, on 10th February 2005 for the purpose of hearing and thereafter future date can be fixed by the Collector. It is further directed that until an appropriate decision is taken by the Collector on merits, the parties shall maintain status-quo. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.